

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

RICHARD A. METCALF,)	
)	
Plaintiff)	
)	
vs.)	No. CIV-06-403-C
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
Administration,)	
)	
Defendant)	

ORDER

This action for judicial review of the final decision of the Commissioner of the Social Security Administration, denying applications for disability and supplement security income benefits, was referred to United States Magistrate Judge Gary M. Purcell for initial proceedings, consistent with 28 U.S.C. § 636(b)(1)(B). On December 15, Judge Purcell entered a Report and Recommendation recommending that the decision of the Commissioner be affirmed. Plaintiff, through counsel, has timely objected, and the Court considers the matter de novo.

Plaintiff raises one objection to the Report and Recommendation:

The ALJ committed error of law by disregarding the effects of Plaintiff's documented tremor disorder on his ability to perform alternative work where the ALJ failed to perform the legally required analysis and where the ALJ's conclusions are based on inaccurate representations of the medical evidence and the testimony.

In its essence, the objection is that the ALJ's conclusion – that Plaintiff's tremors were controlled with medication – was incorrect, and that Judge Purcell's harmless error analysis was both incomplete and erroneous. The ALJ summarizes the medical evidence in several places in her decision. The comment objected to appears barely halfway through the administrative decision, in a paragraph again summarizing the medical evidence. (Tr. 20.) The ALJ goes on, however, with extensive findings, and never again restates the mistaken conclusion that Plaintiff's tremors are controlled with medication. The ALJ exhaustively describes Plaintiff's mental condition, daily activities, medical findings, and makes her conclusions. None of her factual or legal conclusions are based upon whether Plaintiff's tremors are controlled with medication. The ALJ took into consideration Plaintiff's tremors, she merely found him to be not credible in his description of their debilitating effects. The misstatement of fact, if, indeed it was, is not the sort of "error" which requires the harmless error analysis set out in Allen v. Barnhart, 357 F.3d 1140, 1142, 1145 (10th Cir. 2004). It is simply a statement in a 20-page decision which does not appear to have been relied upon in any way by the ALJ. Having examined the decision of the ALJ and the transcript of the hearing as well as the medical evidence, the Court finds well more than substantial evidence to support the ultimate conclusion of the Commissioner, that Plaintiff is not disabled as that term is defined by the Social Security Act.

Accordingly, the Court adopts the Report and Recommendation of the Magistrate Judge, in its entirety, and for the reasons stated therein, finds that the decision of the Commissioner is supported by substantial evidence and is affirmed. A judgment will enter accordingly.

IT IS SO ORDERED this 22nd day of January, 2007.



ROBIN J. CAUTHRON
United States District Judge